No. _____

In the
Supreme Court of the United States

FREEDOM FOUNDATION, a not-for-profit organization,

Petitioner,

v.

RITA GAIL TURNER, IN HER OFFICIAL CAPACITY AS LITIGATION RESEARCH COORDINATOR IN THE PUBLIC RECORDS ACT UNIT OF THE OFFICE OF GENERAL COUNSEL FOR THE LOS ANGELES SCHOOL DISTRICT, ET AL.,

Respondents,

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD, ET AL.,

Intervenor -Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

The Ninth Circuit Court of Appeals issued a decision in Petitioner Freedom Foundation's case on March 10, 2025, affirming the district court's order dismissing Petitioner's claims (Exhibit A). The Petition for Writ of Certiorari is due in this Court no later than June 9, 2025. As required, this application precedes that date by more than 10 days. This Court has jurisdiction under 28 U.S.C. § 1254.

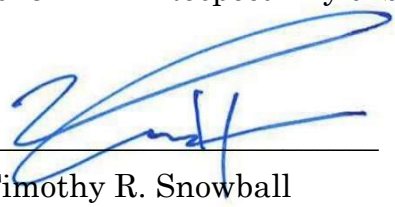
This case raises important federal questions concerning whether the State of California can encourage public employee membership in labor unions by denying other speakers the timely ability to communicate with the employees before they agree to become union members. Specifically, the question in this case is whether the government can deny members of the public previously publicly available information regarding the dates, times, and locations

of new public employee orientations as a means of preventing those employees from exposure to anti-union speech. This kind of content-based and viewpoint discriminatory regulation potentially conflicts with the First Amendment and the precedents of this Court. *See, e.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155, 166 (2015).

Pursuant to Supreme Court Rule 13.5, Petitioner respectfully requests an extension of 60 days to file its Petition for Writ of Certiorari in this Court. Granting this application would extend the deadline for the filing of a Petition to August 8, 2025. Petitioner's Counsel of Record had extensive litigation duties during the preparation period for the Petition. This includes preparing and filing a Complaint, First Amended Complaint, and Motion for Preliminary Injunction in *Tarbah v. San Bernardino County, et al.,* 5:25-cv-00882 (filed Apr. 10, 2025), and opposition to a Motion for Attorney Fees in *Baker v. California School Employees Assoc.*, *et al.,* 1:23-at-01023 (filed Dec. 6,

2023), and an *Amicus Curiae* Brief before this Court in *Crowe v. Oregon State Bar, et al.*, No. 24-1025 (2025). Due to these time constraints, and in order to cogently prepare for the pending Petition, Petitioner respectfully request that an order be entered extending his time to file for a Petition for Writ of Certiorari by 60 days, up to and including August 8, 2025.

DATED: May 29, 2025 Respectfully submitted,



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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the Supreme Court of the United States that on May 29, 2025, I electronically filed with the Supreme Court of the United States the foregoing document, Application for Extension of Time to File Petition for Writ of Certiorari, and caused a true and correct copy of the same to be delivered via e-mail pursuant to an e-service agreement to the following:

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EXHIBIT A

NOT FOR PUBLICATION

FILED

MAR 10 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FREEDOM FOUNDATION, a not-for-profit organization,

Plaintiff-Appellant,

v.

RITA GAIL TURNER, in her official capacity as Litigation Research Coordinator in the Public Records Act Unit of the Office of General Counsel for the Los Angeles Unified School District, et al.,

Defendant-Appellee,

and

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD, et al.,

Intervenor Defendant-Appellee.

No. 24-768

D.C. No. 2:23-CV-03286-WLH-JPR

MEMORANDUM*

On Appeal from the United States District Court for the Central District of California
Hon. Wesley L. Hsu, presiding

Submitted March 6, 2025**
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: TALLMAN, IKUTA, and CHRISTEN, Circuit Judges.

Plaintiff-Appellant Freedom Foundation, a non-profit organization dedicated to educating public employees about their right to refrain from paying union dues, appeals the district court's dismissal of its First Amendment claim for failing to state a claim. Appellant alleged that California Government Code Section 3556 ("Section 3556"), which prohibits disclosing the time, date, and location of public employee orientations to anyone other than "the employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation," Cal. Gov't Code § 3556, is a viewpoint-based and content-based restriction and a prior restraint on speech. We review de novo the district court's grant of a Rule 12(b)(6) motion for failure to state a claim, *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017) (citation omitted), and we affirm.

Even taking Appellant's non-conclusory factual allegations as true, Appellant did not state a plausible claim that Section 3556 violates the First Amendment as either a content-based or viewpoint-based restriction on speech, or as a prior restraint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell All. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

1. Appellant failed to plausibly allege that Section 3556 is content or viewpoint discriminatory either on its face or in its "justification or purpose." *See Reed v. Town of Gilbert*, 576 U.S. 155, 166 (2015) (citations omitted). First, Section

3556 is not facially discriminatory because it does not "draw[] distinctions based on the message a speaker conveys." *See id.* at 163 (citation omitted). Like the regulation at issue in *Boardman v. Inslee*, 978 F.3d 1092 (9th Cir. 2020), Section 3556 regulates the dissemination of information based on the receiver's legal status—the employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation—not the content of their speech or the viewpoint they convey. *See Boardman*, 978 F.3d at 1112.

Second, Section 3556 does not discriminate in its "purpose and justification." *Reed*, 576 U.S. at 166. Its legislative history reflects a content and viewpoint neutral purpose and Appellant did not plead sufficient facts to show otherwise. Legislative reports show that the confidentiality provision arose out of "incidents of workers being targeted at public gatherings" that caused "privacy and safety concerns" for public employees. This is content and viewpoint neutral and concerns legitimate state interests. *See Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 271 (9th Cir. 1995). So, too, is ensuring that an exclusive bargaining representative has access to carry out the duty of communicating with public employees at an orientation. *Boardman*, 978 F.3d at 1118; *see Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 898–99 (2018). The fact that Section 3556 has the "incidental effect" of denying Appellant access to the orientation information does not negate the law's neutral purpose. *Boardman*, 978 F.3d at 1113.

Appellant's theory is that Section 3556 was "adopted by the government because of disagreement with the message [the speech] conveys" based on the Legislature's allegedly pro-union bias. *See Reed*, 576 U.S. at 164 (alteration in original) (internal quotation marks and citation omitted). But none of Appellant's alleged evidence establishes a plausible connection between legislators' perceived pro-union bias and Section 3556.

2. Appellant failed to plausibly allege that Section 3556 amounts to a prior restraint, considering that the law does not forbid any speech. *See Twitter, Inc. v. Garland*, 61 F.4th 686, 702-03 (9th Cir. 2023), *cert. denied sub nom. X Corp. v. Garland*, 144 S. Ct. 556 (2024). Section 3556 does not allow the government to issue or threaten to issue an order forbidding speech, and it does not give the government discretion to approve or disapprove of Appellant's speech. The law allows the exclusive representatives of the employees to receive information about the location and timing of the orientation session based solely on legal status, which we affirmed in *Boardman*. *Boardman*, 978 F.3d at 1110. As the district court explained, Appellant did not state a claim by simply alleging that Section 3556 burdens Appellant's ability to efficiently locate and speak to new employees at orientations. Appellant acknowledged that Section 3556 does not bar it from reaching public employees to convey its message. Appellant can locate the names of new employees under the California Public Records Act.

3. Since Section 3556 does not implicate First Amendment rights, it is subject to rational basis review, which presumes the law is constitutional. *Id.* at 1118 (citations omitted). Appellant does not contest that Section 3556 has a rational basis. It admits that the concern for employee privacy is "generally important," and "might suffice as support for a government interest under a rational basis approach . . . ." *See also id.* (holding that analogous law survived rational basis review because the state has a legitimate public interest in privacy and safety of the workers, as well as the "special responsibilities of an exclusive bargaining representative" (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 54 (1983))).

AFFIRMED.